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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,663	11/06/2003	John C.. Schwarz	116825-00109	7364

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EXAMINER	
TRAN LIEN, THUY	

ART UNIT	PAPER NUMBER
.. 1761	

DATE MAILED: 12/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/701,663	SCHWARZ, JOHN C..	
	Examiner	Art Unit	
	Lien T. Tran	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 September 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) *18-20* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-17* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Applicant's election with traverse of Group I claims 1-17 in the reply filed on 9/29/06 is acknowledged. The traversal is on the ground(s) that all of the groups relate in some manner to cranberry infusion and thus, it is not a substantial burden to examiner all the claims. This is not found persuasive because the apparatus claimed does not relate in some manner to cranberry infusion. The recitation of " for punching cranberries" is only an intended use of the apparatus. The apparatus belongs to a separate class from the method and can be used in a totally different method. Thus, the two inventions are distinct and require separate search. Applicant has not argued that the two inventions are not distinct.

The requirement is still deemed proper and is therefore made FINAL.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-12, 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kahn et al in (4350711) view of Weisberger et al.

Kahn et al disclose methods for infusing fruits. The fruits include cherries, strawberries, elderberries or any fruit which is capable of undergoing an osmotic exchange with a sugar solution. Almost all fruits possess this property. The method comprises the steps of creating site or site for the infusion of the sugar solids and infusing with sugar solids by immersing the fruit in a solute containing bath comprised of a fructose containing solution. Fruits which have been previously frozen as well as fresh fruits may be infused. The fruits can be immersed in sequential baths of sugar solids. The infusion process may be performed in a batch or a continuous manner. The infusion process may require from about 36-60 hours. The infused fruit products may be dehydrated by any of a number of conventional processes. (see col. 1 lines 57-66, col. 2 lines 3-56, col. 3 lines 58-60, col. 5 lines 14-15, col. 6 lines 18-20, col. 7 lines 12-15)

Kahn et al do not disclose cranberries, using a tapered punch having the dimensions as claimed, using baffled barrels, the capacity of the barrels, the time and temperature of the drying and the sugar content as claimed.

Weisberger et al disclose a piercing device comprising a tubular rod having a first end and a second end; the first end is tapered to a point. (see col. 2 lines 65-66, and element number 30 in the figure.

Kahn et al disclose any fruit can be infused; thus, it would have been obvious to infuse cranberries to make sweetened cranberries. It would have been obvious to use any device to create sites for the infusion. It would have been obvious to one skilled in the art to use any piercing device, such as the one disclosed by Weisberger et al to

create sites on the fruit for the infusing step. It would have been obvious to one skilled in the art to use any device having any varying dimension as long as sites can be made to allow for the infusion. It would have been obvious to use any variety of cranberries; this would have been an obvious matter of choice. It would have been obvious to use any container which has the capacity to hold the fruit; this determination is within the skill of one in the art. It would have been obvious to one skilled in the art to determine the appropriate time and temperature for the drying process depending on the moisture content wanted. Such factors are result-effective variables which can readily be determined through routine experimentation. It would have been obvious to make the solution having any degree of sugar content depending on the degree of sweetness desired for the product.

Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kahn et al in view of Weisberger et al as applied to claims 1-12, 15-17 above, and further in view of Fletcher.

Kahn et al do not disclose coating with oil before drying and the amount of oil used.

Fletcher discloses a method of making infused solid fruit product. Fletcher teaches to light coat the infused fruit with edible oil to facilitate handing and packaging.

It would have been obvious to coat the fruit with oil for the reason taught by Fletcher. In absence of showing of criticality or unexpected result, t would have been a matter of preference to coat before drying or after drying because the same function is

obtained. It would have been within the skill of one in the art to determine the appropriate amount through routine experimentation.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday, Wednesday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

December 1, 2006

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1700